

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

§

§

V.

§

CRIMINAL NO. 6:06-CR-48-1

§

RAFAEL ZACHARY LEOS

§

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On August 6, 2013, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Rafael Zachary Leos. The government was represented by Jim Middleton, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by court-appointed federal defender Ken Hawk.

Defendant originally pled guilty to the offense of Bank Robbery, a Class C felony. The offense carried a statutory maximum imprisonment term of 20 years. The United States Sentencing Guideline range, based on a total offense level of 23 and a criminal history category of II, was 51 to 63 months. On February 8, 2007, District Judge Michael Schneider sentenced Defendant to 63 months imprisonment and 3 years supervised release subject to the standard conditions of release, plus special conditions to include paying \$9,422.77 restitution, financial disclosure, not incurring new credit charges without approval, and participating in a drug testing and treatment program. On June 26, 2011, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was required, in relevant part, not to commit another federal, state, or local crime. In its petition, the government alleges that Defendant violated his term of supervised release on December 25, 2011, when he was arrested

and charged with Driving While Intoxicated, 3rd or More, by the Tyler Police Department in Tyler, TX.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by committing the offense of Driving While Intoxicated, 3rd or More, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). The Court shall then revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade B violation is 6 to 12 months. U.S.S.G. 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the government's allegation. In exchange, the government agreed to recommend that Defendant serve 6 months of imprisonment, consecutive to his state imprisonment term, Cause No. 114-0400-13, with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Rafael Zachary Leos be committed to the custody of the Bureau of Prisons for a term of 6 months imprisonment, served consecutive to his state imprisonment term Cause No. 114-0400-13, with no supervised release to follow.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael Schneider for adoption immediately upon issuance.

So ORDERED and SIGNED this 7th day of August, 2013.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE